

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-191856

DATE: APR 5 1979

MATTER OF: Keco Industries, Inc.

CN600151

[Protest of IFB Cancellation by Defense Logistics
Agency]

DIGEST:

Where specifications in invitation for bids refer to obsolete part numbers, impose first article test requirement that might be impossible to meet, and impose requirement that might exceed Government's minimum needs, contracting officer may reasonably conclude that cogent and compelling reason exists to cancel solicitation after bid opening so that specifications may be reviewed and modified if necessary.

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Keco Industries, Inc. (Keco), protests the cancellation, after bid opening, of invitation for bids (IFB) DLA 400-78-B-0164, issued by the Defense Logistics Agency's Defense General Supply Center (Center) for a quantity of air conditioners.

The contracting officer canceled the solicitation because "the specifications * * * are inadequate and/or obsolete and require a thorough technical review and possible modification." In making this determination, the contracting officer considered that the specified compressor and other components were no longer manufactured; that a first article test requirement currently might be impossible to meet; and that in any event the test requirement might exceed the Government's needs.

Subsequently, the agency reported that the Air Force, for which the air conditioners were being procured, had reviewed the specifications and had decided to henceforth use an Army specification, for a similar unit, which was more "up-to-date." It was further reported that there was "presently * * * no need for" 76 of the 83 units because the original order had been placed to ensure adequate inventory for anticipated needs but inventory levels were still at an adequate level.

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Contracting officers have broad discretionary authority to reject all bids and cancel an invitation for bids. Scott Graphics, Inc., 54 Comp. Gen. 973 (1975), 75-1 CPD 302. However, because of the potential adverse impact on the competitive bidding system of canceling an invitation after bid prices have been exposed, contracting officers, in the exercise of their discretionary authority, must find that a cogent and compelling reason exists that warrants cancellation. Spikard Enterprises, Inc., et al., 54 Comp. Gen. 145 (1974), 74-2 CPD 121; Engineering Research, Inc., 56 Comp. Gen. 364 (1977), 77-1 CPD 106; Scott Graphics, supra. Although not all situations involving inadequate specifications warrant cancellation after bid opening, see GAF Corporation, 53 Comp. Gen. 586 (1974), 74-1 CPD 68, generally the use of inadequate or deficient specifications provides a sufficient basis for invitation cancellation. Defense Acquisition Regulation (DAR) 2-404.1(b) (1976 ed.); Revere Supply Co., Inc., B-187154, January 12, 1977, 77-1 CPD 21; Empire Painting Company, Inc., B-187688, February 17, 1977, 77-1 CPD 118.


Here, the contracting officer canceled the IFB after the low bidder, who was experiencing difficulties meeting requirements for the same item under another contract, complained that it was impossible to meet the specifications. According to the contracting officer, "the instant procurement brought to light for the first time the existence of a serious question relating to the requirements" of the specification since the low bidder was unable, under the other contract, to meet the specification requirements but could apparently produce an item meeting the Government's minimum needs nonetheless. Although Keco asserts that it could meet and was meeting all specification requirements under its contracts for these air conditioners, we think the contracting officer had a reasonable basis for questioning the validity of those requirements and seeking review of the Government's actual needs.

Moreover, subsequent events (the Air Force determinations to rely on a different albeit related specification and that the solicited quantities are not currently needed) lend support to the overall decision

to cancel. While Keco suggests that these events are not germane to the cancellation decision, we have often pointed out that the propriety of a procurement action such as IFB cancellation will be determined on the basis of all relevant circumstances, including those not considered by the contracting officer at the time of decision. See Empire Painting Company, Inc., supra; Hercules Demolition Corporation, B-186411, August 18, 1976, 76-2 CPD 173.

Consequently, in light of the entire record before us, we are unable to conclude that the contracting officer's decision was unreasonable and therefore find no basis for questioning that decision. Valley Cement Construction, Inc., B-188429, May 25, 1977, 77-1 CPD 366.

The protest is denied.


Deputy Comptroller General
of the United States